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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,951 ✓	05/29/2001 ✓	Richard C. Graham	10779-003-999 ✓	4967

20583 7590 10/17/2002
PENNIE AND EDMONDS
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 100362711

EXAMINER

GOLBA, TARA M

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/17/2002

Amendment: 1/17/03 (EM)

Please find below and/or attached an Office communication concerning this application or proceeding.

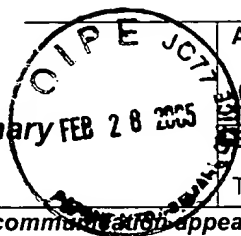
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GROUP 3600

REFERRED TO <u>Uncon</u> REC'D
OCT 23 2002
Pennie & Edmonds O.K. for filing _____

Office Action Summary



Application No.

09/866,951

Examiner

Tara M. Golba

Applicant(s)

GRAHAM, RICHARD C.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 1 is objected to because of the following informalities: In line 6, "though which" should be --through which--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 28 recites the limitation "the shaft" in line 11 (see original claims). There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 31, 32, 33, 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 3,584,821 to Glebe (cited in Office Action of 4/3/2002).

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In reference to claim 31, Glebe discloses a gun rest including: a plate having a first plate section in a first plane (figure 2, where element 14 is held to be a plate with a depression), a second plate section in a second plane (element 16), and an intermediate section between the first and second plate sections (section between elements 14 and 16); and an opening in the first plate section, the opening adapted and configured for a shaft to be inserted therethrough (column 2, lines 52-53); wherein an interior angle is formed between the first and second plate sections (figure 2); the intermediate plate section is adapted to receive the forearm of a firearm (column 2, lines 7-9); and the opening allows selective adjustment of the plate's position along the length of the shaft (column 2, lines 63-64).

In reference to claim 32, Glebe discloses first and second plate sections meeting at an intermediate plate section (figure 2).

In reference to claim 33, Glebe discloses an opening in the first plane (figure 4, where opening for shaft 10 lies in plane of element 14).

In reference to claim 38, Glebe discloses at least a portion of the opening covered by a flexible gripping aid (column 3, lines 2-6: rubber tips protruding into the opening to grip the shaft).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1, 6, 12, 17, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe.

In reference to claim 1, Glebe discloses a gun rest including: a plate with a first end section (figure 2, element 14), a second end section (element 16) and an intermediate section, wherein the plate is bent at the intermediate section such that an interior angle is formed between the first end section of the plate and the second end section of the plate (figure 2: angle between elements 14 and 16); and an opening formed in the first end section of the plate through which a shaft may be inserted (column 2, lines 52-53); wherein the opening is configured and arranged to allow selective adjustment of the plate's position along the length of the shaft (column 2, lines 63-64). Glebe does not specifically disclose an interior angle from 90 degrees to 150 degrees. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select this interior angle range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

In reference to claim 6, Glebe discloses a retaining device for securing the gun rest to the shaft (column 2, lines 43-75).

In reference to claim 12, Glebe discloses a method for improving the accuracy of a sportsman (column 1, lines 9-10), including: providing the claimed gun rest (see discussion of claim 1 above); providing a shaft having first and second end sections (figure 2, shaft 10); inserting the shaft through the opening in the gun rest (as shown in figure 2); placing the second end of the shaft in the ground (figure 2: shaft 10 in the ground); slidably adjusting the position of the gun rest on the shaft to the desired height (column 2, lines 43-45); and placing the forearm of

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a firearm on the gun rest (column 2, lines 7-9). Glebe discloses a shaft placed in the ground rather than placed upon a surface, but it is understood that if the shaft did not have a spike member on the end, it would be placed upon a surface rather than driven into the ground. It would therefore be obvious to one having ordinary skill in the art at the time the invention was made to include the step of placing a shaft upon a surface rather than into the ground, since it is well-known that vertical support shafts do not always include spiked ends and that the shafts must therefore be placed upon a surface rather than into the ground. Glebe does not specifically disclose cradling the forearm of the firearm at the intermediate section of the plate, but Glebe does disclose that the plate “functions to support the barrel of a rifle at any desired position” (column 2, lines 7-9); it is understood that this includes the position at the intermediate section of the plate.

In reference to claim 17, Glebe discloses a retaining device for securing the gun rest to the shaft. See discussion of claim 6 above.

In reference to claim 35, Glebe does not specifically disclose teeth formed into the periphery of the opening. Glebe does, however, state that a variety of frictional or clamping devices can be used to hold the rest on the shaft (column 2, lines 43-48), giving the example of screws which “bite” into the walls of the shaft (column 2, lines 55-58) to grip the shaft. The screws therefore act as teeth biting the shaft. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include teeth formed into the periphery of the opening instead of teeth on screws around the opening, since it has been held that rearranging parts of an invention involves only routine skill in the art.

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9. Claims 2-4, 13-15, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 5,829,731 to Dean (cited in Office Action of 4/3/2002).

In reference to claims 2 and 13, Glebe does not disclose a tear-drop shaped opening.

Dean teaches a support (figures 1, 2) including a tear-dropped shape opening (element 43) with the point of the tear-drop aligned towards a first end section of the support (element 40) and the round end of the tear-drop aligned towards a second end section of the support (element 30). Dean teaches that the tear-dropped shape permits the support to be used with shafts having a wider range of diameters than would be possible with a circular opening (column 4, lines 7-14). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tear-drop shaped opening, as taught by Dean, in the gun rest disclosed by Glebe, to permit the rest to be used with shafts having a wide range of diameters. Dean is considered to be analogous art because it concerns a support element which fits onto a shaft; this is clearly relevant to a gun support designed to fit onto a shaft.

In reference to claims 3 and 14, Glebe does not specifically disclose teeth formed into the periphery of the opening. Glebe does, however, state that a variety of frictional or clamping devices can be used to hold the rest on the shaft (column 2, lines 43-48), giving the example of screws which "bite" into the walls of the shaft (column 2, lines 55-58) to grip the shaft. The screws therefore act as teeth biting the shaft. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include teeth formed into the periphery of the opening instead of teeth on screws around the opening, since it has been held that rearranging parts of an invention involves only routine skill in the art.

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In reference to claims 4 and 15, Glebe discloses at least a portion of the opening covered by a flexible gripping aid (column 3, lines 2-6: rubber tips protruding into the opening to grip the shaft).

In reference to claim 36, Dean teaches a tapering opening. See discussion of claims 2 and 13 above.

In reference to claim 37, Dean teaches an opening that tapers toward a point facing away from an intermediate section of a support and that has a rounded end aligned toward the intermediate section of the support. See discussion of claims 2 and 13 above.

10. Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Dean as applied to claims 4 and 15 above, and further in view of U.S. Patent No. 4,760,624 to Fish.

In reference to claims 5 and 16, Glebe, as modified, does not disclose a flexible gripping aid with a slit.

Fish teaches a flexible gripping aid with a slit (figure 1, slit 14). Fish teaches that the slit provides the object being held with access to the opening (column 2, lines 57-66), and that the flexible gripping aid provides superior closing and gripping capabilities (column 2, lines 30-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a flexible gripping aid with a slit, as taught by Fish, surrounding the opening of the gun rest disclosed by Glebe, as modified, so as to provide access for a shaft through the slit, and to close around the shaft and grip it.

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11. Claims 7, 8, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 5,811,720 to Quinnell et al. (cited in Office Action of 4/3/2002).

In reference to claims 7 and 18, Glebe does not disclose a loop formed onto the second end section.

Quinnell et al. teaches a retaining device in the form of a loop (figure 6, element 148) formed onto a section of a gun rest assembly. The reference teaches that a recoil energy-transferring strap can be secured to this loop (column 8, lines 16-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a retaining device in the form of a loop, as taught by Quinnell et al., formed onto the second end section of the gun rest disclosed by Glebe, to provide a point of attachment for a strap which transfers recoil energy and which secures members of the gun rest assembly together.

In reference to claims 8 and 19, Glebe does not disclose an opening formed into the second end section of the gun rest.

Quinnell et al. discloses a gun rest retaining device in the form of a loop formed *onto* a section of a gun rest (see discussion of claim 7 above) rather than in the form of an opening formed *into* a section of the rest. Nevertheless, the geometry of the loop does comprise an opening. It would have been obvious to form this opening, i.e. this retaining device, within a section of the rest rather than onto an end section of the rest, since rearranging elements of an invention involves only routine skill in the art.

12. Claims 9-11 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 6,276,087 to Singletary (cited in Office Action of 4/3/2002).

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In reference to claims 9 and 20, Glebe discloses the claimed invention except for a mounting bracket such that the shaft may be fixed to a surface.

Singletary teaches a gun rest (figure 1, element 10) including a mounting bracket (element 14a) such that a shaft (element 18) may be fixed to a surface (column 4, lines 27-29). The Singletary reference teaches that this allows the invention to be suited for different environments and usage by enabling it to be removably secured to any particular elevated stationary surface such as a hunting stand, chair, or the like (column 2, lines 17-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a mounting bracket, as taught by Singletary, for the gun rest disclosed by Glebe, to allow a shaft to be removably secured to any elevated stationary surface.

In reference to claims 10 and 21, Glebe does not disclose a mounting bracket comprising pressure plates and a receptacle.

Singletary teaches a mounting bracket (figure 1, element 14a) including a first pressure plate (figure 2, element 28), connectively attached to a second pressure plate (element 32) with a tightener (element 40); and a receptacle (element 22) permanently attached to the first pressure plate, which forms a generally cylindrical cavity (column 6, lines 63-67). Rather than teaching a cavity perpendicular to the first pressure plate, Singletary shows a cavity which is positioned at a slight angle from the plane perpendicular to the first pressure plate (figure 2). Nevertheless, Singletary teaches that this angled position is a "displaced" position (column 5, lines 12-16), thereby suggesting that the non-displaced position of the cavity would be perpendicular to the first pressure plate. Moreover, Singletary teaches that the user may wish to rotate the device to any desired location (column 7, lines 1-3). It would therefore be obvious to position the cavity

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taught by Singletary such that it is perpendicular to the pressure plate, since positioning of the device at a perpendicular angle may be desirable to the user. As discussed above in reference to claim 9, the Singletary reference teaches that the mounting bracket allows the invention to be suited for different environments and usage by enabling it to be removably secured to any particular elevated stationary surface such as a hunting stand, chair, or the like (column 2, lines 17-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a mounting bracket with pressure plates and a receptacle perpendicular to the plates, as taught by Singletary, for the gun rest disclosed by Glebe, to allow a shaft to be removably secured to any elevated stationary surface.

In reference to claims 11 and 22, Singletary does not specifically teach a nut and bolt tightener. Nevertheless, the tightener (figure 2, element 36) includes a threaded rod (column 4, lines 53-54) secured to a plate by another member (figure 2, where an unlabeled element is positioned between plate 38 and the rod of assembly 36). Although not specifically labeled as a nut and bolt assembly, it is understood that the threaded rod could be called a bolt (defined as a "rod for fastening objects together that usually has a head at one end and a screw thread at the other and is secured by a nut"). Additionally, it would have been obvious to select a nut and bolt assembly as the tightener, since applicant has not disclosed that the specific tightener used solves any stated problem or is for any particular purpose, and it appears that the invention would perform equally well using any tightener such as the well-known nut and bolt assembly.

13. Claims 23, 28, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 3,391,889 to Stewart, Jr.

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In reference to claims 23 and 34, Glebe discloses the claimed invention except for the opening extending to one side of the plate.

Stewart, Jr. teaches a support bracket in which an opening extends to one side of the bracket (figure 1, element 15). Stewart, Jr. teaches that this allows the bracket to be easily installed onto and removed from a shaft (column 2, lines 43-45, 55-57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an opening extending to one side of a plate, as taught by Stewart, Jr., in the gun rest disclosed by Glebe, so as to provide ease of installation and removal.

In reference to claim 28, Glebe discloses the claimed retaining device. See discussion of claim 6 above.

14. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Stewart, Jr. as applied to claim 23 above, and further in view of Dean.

In reference to claim 24, Dean teaches the claimed tear-drop shape. See discussion of claim 2 above.

In reference to claims 25 and 26, Glebe discloses the claimed teeth and flexible gripping aid. See discussion of claims 3 and 4, respectively.

15. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Stewart, Jr. and Dean as applied to claim 26 above, and further in view of Fish.

In reference to claim 27, Fish teaches the claimed flexible gripping aid with a slit. See discussion of claim 5 above.

16. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Stewart, Jr. as applied to claim 28 above, and further in view of Quinnell et al.

In reference to claims 29 and 30, Quinnell teaches the claimed retaining devices. See discussion of claims 7 and 8 above.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara M. Golba whose telephone number is (703) 305-0266. The examiner can normally be reached on Monday-Thursday from 8:00 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached at (703) 306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

tmg
October 10, 2002

CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600